

## **GENERAL TERMS AND CONDITIONS**

### **Section TC-1: General Provision**

- 1.1 Nothing in any resulting contract shall be construed as authority for either party to make commitments which will bind the other part beyond the scope of service contained herein. The contract is subject to appropriations by the County.

### **Section TC-2: Laws of the Commonwealth**

- 2.1 Any purchase order or contract resulting from this solicitation shall be governed in all respects whether as to validity, construction, performance, or otherwise by the laws of the Commonwealth of Virginia. The contractor providing goods or services to the County under this contract assures the County that it is:
  - 2.1.1 Conforming to the provisions of the Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, and the Virginia Human Rights Act, as amended, where applicable;
  - 2.1.2 Not employing illegal alien workers or otherwise violating the provision of the Immigration Reform and Control Act of 1986, or Sec. 2.2-4311.1 Code of Virginia.
  - 2.1.3 Complying with federal, state and local laws and regulations applicable to the performance of the services procured; and
  - 2.1.4 Submitting the bid or proposal in full compliance with the Virginia Conflict of Interest Act.
- 2.2 In every contract of over \$10,000.00, the Contractor agrees during the performance of this contract that the Contractor:
  - 2.2.1 Will not discriminate against any employee or applicant for employment because of race, color, sex, disability, or national origin, except where necessary to the normal operation of the Contractor.
  - 2.2.2 Will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this discrimination clause.
  - 2.2.3 Will state that the Contractor is an equal opportunity employer in all solicitations or advertisements for employees place by or on behalf of the Contractor under this contract. All notices, advertisements, and solicitations placed in accordance with federal law rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
  - 2.2.4 The contractor will include the provisions of the foregoing subparagraph 2.B.(1) in every subcontract or purchase order under this Contract of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor; and
- 2.3 In every contract of over \$10,000.00, the Contractor agrees during the performance of this contract that the Contractor shall:

- 2.3.1 Provide a drug-free workplace for its employees.
- 2.3.2 Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, possession, or use of a controlled substance or marijuana is prohibited in its workplace and specify the actions which will be taken against any employee for a violation.
- 2.3.3 State in all of its solicitations or advertisements for employees that it maintains a drug-free workplace.
- 2.3.4 Include the provisions of this sub-paragraph in every subcontract or purchase order of over \$10,000.00 so that said provisions shall be binding upon each subcontractor or vendor.

For purposes of this sub-paragraph, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the provisions of the Virginia Public Procurement Act, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marihuana during the performance of the contract.

In addition to the provision contained in subparagraph 3 pertaining to drug-free workplace, Contractor shall comply with the Federal Drug Free Workplace Act.

- 2.4 Pursuant to Section 2.2-4343.1 of the Code of Virginia 1950, in all invitations to bid, request for proposals, contracts, and purchase orders, the County does not discriminate against faith-based organizations.

“Faith-based Organization” means a religious organization that is or applies to be a Contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

If Contractor is a faith-based organization, then Contractor shall give to each individual who applies for or received goods, services, or disbursements provided pursuant to this Agreement the following notice:

## **NOTICE**

*Pursuant to Section 2.2-4343.1 of the Code of Virginia of 1950, as an applicant for or recipient of goods, services, or disbursements provided pursuant to contract between the County and a faith-based organization, you are hereby notified as follows:*

***Neither the County's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the County Administrator.***

- 2.5 Compliance with State Law Section 2.2-4311.2 Code of Virginia.
- 2.5.1 If Contractor is organized as stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership it shall certify that it is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1-or Title 50 of the Code of Virginia or as otherwise required by law.
- 2.5.2 Any contractor organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 Title 50 of the Code of Virginia shall include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any contractor that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.
- 2.5.3 Any contractor described in Subsection (2) that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures is granted by the Director of the Department of General Services or his designee or by the chief executive of a local governing body.
- 2.5.4 Any Contractors described in subsection (1) that enters into a contract with the County pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the contract.
- 2.5.5 County may void any contract with a contractor if the contractor fails to remain in compliance with the provisions of this section.

### **Section TC-3: Certifications**

- 3.1 The Contractor certifies that:
- 3.1.1 The bid offer is made without prior participation, understanding, agreement, or connection with any corporation, firm or person submitting a bid/offer for the same materials, supplies, equipment, or services with respect to the allocation of the business afforded by or resulting from the acceptance of the bid or proposal; is in all respects fair and without collusion or fraud; and is or is intended to be competitive and free from any collusion with any person, firm or corporation;
  - 3.1.2 The Contractor has not offered or received any kickback from any other bidder or Contractor, supplier, manufacturer, or subcontractor in connection with the bid/offer on this solicitation. A kickback is defined as an inducement for the award of a contract, subcontracts or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;
  - 3.1.3 The Contractor is not a party to nor has he participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or conditions upon which the contract resulting from the acceptance of his bid proposal is to be performed;
  - 3.1.4 The Contractor understands that collusive bidding is a violation of the Virginia Governmental Frauds Act and federal law, and can result in fines, prison sentences and civil damage awards and agrees to abide by all conditions of this proposal; and
  - 3.1.5 The Contractor or subcontractor has not and will not confer on any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

### **Section TC-4: Warranties**

- 4.1 Any goods or services furnished by Contractor under the contract shall be covered by the most favorable warranties provided by the Contractor to any customer; the rights and remedies hereby provided are in addition to any and do not limit those otherwise available to the County. The Contractor agrees that if such warranties are in any respect breached, the Contractor will pay to the County the full contract price agreed to by the County to be paid for the supplies, materials, equipment or services furnished under the bid or proposal.

### **Section TC-5: Modification, Additions or Changes**

- 5.1 Modifications, additions or changes to these terms and conditions may not be made except in writing and agreed to by the County; however, no fixed price contract may be increased by more than twenty-five (25) percent of the amount of the contract or \$50,000.00 whichever is greater without the approval of the Board of Supervisors. The amount of any contract may

not be increased for any purpose without adequate consideration provided to the County.

#### **Section TC-6: Assignment**

- 6.1 The contract may not be assigned, sublet, or transferred without the written consent of the County.

#### **Section TC-7: Default**

- 7.1 In the case of default or breach by the Contractor or the failure of the Contractor to deliver the services in conformance with the specifications in the contract the County shall give written notice to the Contractor specifying the manner in which the contract has been breached. If the County gives such notice of breach and the Contractor has not corrected the breach within fifteen (15) days of receipt of the written notice, the County shall have the right to immediately rescind, revoke or terminate the contract and in addition to any other remedies available at law to procure such services from other sources and hold the contractor responsible for any and all excess cost occasioned thereby.

#### **Section TC-8: Indemnification**

- 8.1 The Contractor shall indemnify and hold harmless County, its officers, boards, commissions agents, and employees against and from any and all claims, demands, causes of action, actions, suits, proceedings, damages, costs, or liabilities (including costs or liabilities of the County with respect to its employees), of every kind and nature whatsoever, including but not limited to, damages for injury or death or damage to person or property, and regardless of the merit of any of the same, against all liability to others, and against any loss, cost, and expenses resulting or arising out of any of the same, including the attorney's fees, accounting fees, per diem expenses, traveling and transportation expenses or other costs or expenses arising out of or pertaining to the performance of the Contract, unless resulting from the negligence of the County or its offices, boards, commission, agents or employees.

#### **Section TC-9: Ownership of Documents**

- 9.1 Any reports, studies, photographs, negatives, or other documents prepared by Contractor in the performance of its obligations under any resulting contract shall be remitted to the County by the contractor upon completion, termination or cancellation of this Contract. Contractor shall not use, willingly allow or cause to have such material used for any purpose other than performance of Contractor's obligations under this contract without the prior written consent of the County. The County shall own the intellectual property rights to all material produced under this contract.

#### **Section TC-10: Required Payment**

- 10.1 Pursuant to Section 2.2-4354 of the code, the contractor covenants and agrees to:
- 10.1.1 Within seven (7) days after receipt of any amounts paid to the contractor under the Contract, (i) pay any subcontractor for its proportionate share of the total payment received from the County attributable to the work under the contract performed by such subcontractor, or (ii) notify the County and the subcontractor in writing of its intention to withhold all or part of the subcontractor's payment and the reason therefore;

- 10.1.2 Provide its federal employer identification number or social security number, as applicable, before any payment is made to the Contractor under the Contract; and
- 10.1.3 Pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the contractor on all amounts owed by the contractor that remain unpaid after the seventh (7) day following receipt by the Contractor of payment from the County for work performed by the subcontractor under the Contract, except for amounts withheld pursuant to subparagraph 10a. above.
- 10.1.4 Unless otherwise provided under the terms of the contract, interest shall accrue at the rate of one percent per month.
- 10.1.5 Include in its contract with any and all subcontractors the requirements of a, b, c and d above.

#### **Section TC-11: No Waiver**

- 11.1 Any failure of the County to demand rigid adherence to one or more of the Agreement's provisions in the Contract, on one or more occasions shall not be construed as a waiver nor deprive the county of the right to insist upon strict compliance with the terms of this Contract. Any waiver of a term of this contract, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

#### **Section TC-12: Termination**

- 12.1 The County may terminate the resulting Contract for its convenience upon thirty (30) days written notice to the Contractor. The Contractor shall not be paid for any service rendered or expense incurred after receipt of such notice except such fees and expenses incurred prior to the effective date of termination that are necessary for curtailment of the Contractor's work under this contract.

If termination is for the contractor's breach of the requirements of the Agreement, including the schedule set forth herein, the County shall be entitled to recover reasonable costs, damages, and/or attorney's fees caused by the Contractor's breach. In such case, written notice of termination shall be given as provided in the Agreement.

#### **Section TC-13: Choice of Law**

- 13.1 To ensure uniformity of the enforcement of this Contract, this Agreement it shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

#### **Section TC-14: Forum Selection**

- 14.1 The parties hereby submit to the personal jurisdiction and venue of any state or federal court located within the Commonwealth of Virginia for resolution of any and all claims, causes of action or disputes arising out of or related to this Contract. The parties further agree that any claims, causes of action or disputes arising out of, relating to or concerning this contract shall have jurisdiction and venue only in the Circuit Court of Appomattox or in the U.S. District Court, of Virginia.

### **Section TC-15: Severability**

- 15.1 If any provisions of this Contract is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reasons, such provisions shall be fully severable and this Contract shall be construed and enforced as if such illegal, or unenforceable provision had never been part of this Contract, and the remaining provisions of this Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from this Contract.

### **Section TC-16: Notices**

- 16.1 All request, notices and other communications required or permitted to be given under this Contract shall be in writing and delivery thereof shall be deemed to have been made when such notice shall have been either:
- 16.1.1 Duly mailed by first-class, postage prepaid, return receipt requested, or any comparable or superior postal or air courier service then in effect, or
- 16.1.2 Transmitted by hand delivery, telegram, telex, telecopy, or facsimile transmission, to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party. Notices to the county shall be sent to:

John Spencer, Purchasing Agent  
Appomattox County  
P.O. Box 863  
153A Morton Lane  
Appomattox, Virginia 24522

### **Section TC-17: Insurance**

- 17.1 **Contractor's Insurance Requirements for Contracts \$1 Million or Greater in Value**
- 17.1.1 The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract.
- 17.1.2 The contractor shall, during the continuance of all work under the Contract provide the following:
- (.1) Maintain statutory Workers' compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the Contractor from any liability or damages

for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.

- (2) The Contractor agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Contractor, its Subcontractors, and the interest of the County, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required.
- (3) The Contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
- (4) Builder's Risk Policy: The Contractor shall provide Builder's Risk and Fire and Extended Coverage insurance to protect the County and Contractor and Subcontractors against loss caused by the perils insured in the amount of 100% of the insurable value of the Contract less the value of that portion of the Work which has been accepted as substantially complete. Such insurable value shall reflect any increases to the contract amount through Change Orders. Policy to be in Builder's Risk Completed Value forms, including the following:
  - 1. Policies shall be written to include the names of contractors and County and the words "as their interest may appear";
  - 2. All insurance shall be in effect on or before the date when construction work is to commence; and
  - 3. All insurance shall be maintained in full force and effect until the substantial completion of the Work or any portions thereof.
- (5) Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- (6) Contractor agrees to maintain Environmental Impairment Liability including sudden and accidental pollution and in transit coverage as well as coverage for storage at site.
- (7) Liability Insurance "*Claims Made*" basis:

If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions.

The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

1. Agree to provide certificates of insurance evidencing the above coverages for a period of two years after final payment for the Contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's or Subcontractor's work under this Contract, or
  2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- (.8) The Contractor shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the County, the Contractor and Subcontractors.
- (.9) Rating Requirements:
1. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
  2. European markets including those based in London, and the domestic surplus lines market that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's broker can provide financial data to establish that a market's policyholder surpluses are equal to or exceed the surpluses that correspond to Best's A:VI Rating.
- (.10) Hold-harmless and Indemnification:
- "The Contractor hereby agrees to indemnify and hold harmless Appomattox County, Virginia, its officers, agents and all employees and volunteers, from any and all claims for bodily injury, personal injury, and/or property damage, including cost of investigation, all expenses of litigation, including reasonable attorney fees, and the cost of appeals arising out of any claims or suits which result from errors, omissions, or negligent acts of the Contractor, his Subcontractors and their agents and employees."
- (.11) The Contractor will provide an original, signed Certificate of Insurance and such endorsements as prescribed herein.
- (.12) The Contractor will secure and maintain all insurance certificates of its Subcontractors which shall be made available to the County on demand.
- (.13) The Contractor will provide on demand certified copies of all insurance coverages related to the Contract within ten (10) business days of demand by the County. These certified copies will be sent to the County from the Contractor's insurance agent or representative.

- 17.1.3 No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five (45) day written notice to the County. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- 17.1.4 Compliance by the Contractor and all Subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all Subcontractors of their liabilities provisions of the Contract.
- 17.1.5 Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the Subcontractors.
- 17.1.6 Nothing contained in the specifications shall be construed as creating any contractual relationship between any Subcontractor and the County. The Contractor shall be as fully responsible to the County for the acts and omissions of the Subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
- 17.1.7 Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- 17.1.8 The Contractor and all Subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.
- 17.1.9 Any loss insured under subparagraph 11.1.2.4 is to be adjusted with the County and made payable to the County as trustee for the requirements of any applicable mortgagee clause. The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to his Sub-subcontractors in similar manner.
- 17.1.10 When the County finds it necessary to occupy or use a portion or portions of the work prior to substantial completion thereof, such occupancy shall commence with a mutual agreement between the County and Contractor. The insurance company or companies providing the property insurance recognize this contingency and shall provide evidence of such endorsement prior to commencement of work. This insurance shall not be canceled or lapsed for the unoccupied part of the building on account of such partial occupancy. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.
- 17.1.11 The County, its officers and employees shall be named as an "additional insured" and "loss payee" on the Automobile, General Liability policies and it shall be stated on the Insurance Certificate with the provision that this coverage "is primary to all other coverage the County may possess." (Use "loss payee" where there is an insurable interest). In addition, the Contractor shall provide the County with an endorsement to the policy verifying the County's additional insured and loss payee status.

17.1.12 If an "ACORD" Insurance Certificate form is used by the Contractor's insurance agent, the words "endeavor to" and ". . . but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted.

## 17.2 Contractor's Insurance Requirements for Contracts Under \$1 Million in Value

17.2.1 The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract.

17.2.2 The contractor shall, during the continuance of all work under the Contract provide the following:

- (.1) Maintain statutory Workers' compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
- (.2) The Contractor agrees to maintain Commercial General Liability insurance in the amount of \$500,000 per occurrence/aggregate, to protect the Contractor, its Subcontractors, and the interest of the County, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required.
- (.3) The Contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$500,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
- (.4) **Builder's Risk Policy:** The Contractor shall provide Builder's Risk and Fire and Extended Coverage insurance to protect the County and Contractor and Subcontractors against loss caused by the perils insured in the amount of 100% of the insurable value of the Contract less the value of that portion of the Work which has been accepted as substantially complete. Such insurable value shall reflect any increases to the contract amount through Change Orders. Policy to be in Builder's Risk Completed Value forms, including the following:

1. Policies shall be written to include the names of contractors and County and the words "as their interest may appear";
  2. All insurance shall be in effect on or before the date when construction work is to commence; and
  3. All insurance shall be maintained in full force and effect until substantial completion of the Work or any portions thereof.
- (.5) Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- (.6) Contractor agrees to maintain Environmental Impairment Liability including sudden and accidental pollution and in transit coverage as well as coverage for storage at site.
- (.7) Liability Insurance "*Claims Made*" Basis:

If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

1. Agree to provide certificates of insurance evidencing the above coverages for a period of two years after final payment for the Contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's or Subcontractor's work under this Contract, or
  2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- (.8) The Contractor shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the County, the Contractor and Subcontractors.
- (.9) Rating Requirements:
1. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
  2. European markets including those based in London, and the domestic surplus lines market that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's broker can provide financial data to establish that a market's policyholder surpluses are equal to or exceed the surpluses that correspond to Best's A:VI Rating.

(.10) Hold-harmless and Indemnification:

"The Contractor hereby agrees to indemnify and hold harmless Appomattox County, Virginia, its officers, agents and all employees and volunteers, from any and all claims for bodily injury, personal injury, and/or property damage, including cost of investigation, all expenses of litigation, including reasonable attorney fees, and the cost of appeals arising out of any claims or suits which result from errors, omissions, or negligent acts of the Contractor, his Subcontractors and their agents and employees."

(.11) The Contractor will provide an original, signed Certificate of Insurance and such endorsements as prescribed herein.

(.12) The Contractor will secure and maintain all insurance certificates of its Subcontractors which shall be made available to the County on demand.

(.13) The Contractor will provide on demand certified copies of all insurance coverages related to the Contract within ten (10) business days of demand by the County. These certified copies will be sent to the County from the Contractor's insurance agent or representative.

17.2.3 No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five (45) day written notice to the County. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.

17.2.4 Compliance by the Contractor and all Subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all Subcontractors of their liabilities provisions of the Contract.

17.2.5 Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the Subcontractors.

17.2.6 Nothing contained in the specifications shall be construed as creating any contractual relationship between any Subcontractor and the County. The Contractor shall be as fully responsible to the County for the acts and omissions of the Subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

17.2.7 Precaution shall be exercised at all times for the protection of persons (including employees) and property.

17.2.8 The Contractor and all Subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.

17.2.9 Any loss insured under subparagraph 11.2.2.4 is to be adjusted with the County and made payable to the County as trustee for the requirements of any applicable mortgagee clause.

The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

- 17.2.10 When the County finds it necessary to occupy or use a portion or portions of the work prior to substantial completion thereof, such occupancy shall commence with a mutual agreement between the County and Contractor. The insurance company or companies providing the property insurance recognize this contingency and shall provide evidence of such endorsement prior to commencement of work. This insurance shall not be canceled or lapsed for the unoccupied part of the building on account of such partial occupancy. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.
- 17.2.11 The County, its officers and employees shall be named as an "additional insured" and "loss payee" on the Automobile, General Liability policies and it shall be stated on the Insurance Certificate with the provision that this coverage "is primary to all other coverage the County may possess." (Use "loss payee" where there is an insurable interest).
- 17.2.12 If an "ACORD" Insurance Certificate form is used by the Contractor's insurance agent, the words "endeavor to" and ". . . but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted.

#### **Section TC-18: Examination of Bid Documents and Site**

- 19.1.1 Before submitting bids, each bidder must examine Bid Documents thoroughly, familiarize himself with Federal, State and Local Laws, ordinances, rules and regulations affecting the work; and correlate his observations with requirements of the Bid Documents.
- 19.1.2 A Pre-Bid Conference will be held at the site as designated in the Advertisement for Bids. It is suggested that all prospective bidders attend and familiarize themselves with the project conditions.

#### **Section TC-19: Interpretations**

- 20.1 No oral interpretations of the Bid Documents will be made to any bidder. To be given consideration, request for interpretations must be received in time to allow preparations of a written response at least five (5) days prior to date fixed for opening of bids. Interpretations will be issued in the form of written addenda to the Bid Documents prior to schedule opening of bids. Only interpretations by formal written addenda will be binding.

#### **Section TC-20: Modifications and Withdrawal of Bids**

- 21.1.3 Modifications and Withdrawal of Bids: Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a bid must be executed) and delivered to the place where bids are to be submitted at any time prior to the opening of bids.
- 21.1.4 Withdrawal of Bids After Date for Submission: In accordance with Procedure (i) of Section 2.2-4330. B-1 of the Code of Virginia, the bidder will have two (2) business days after the

opening of bids within which to claim in writing any mistake as defined in said section and withdraw his bid, provided such mistake be proved from the Contractor's work papers.

- (.1) *Definition:* Contractor's Work Paper are the original work papers, documents, and materials used in the preparation of the bid as referred to in Section 2.2-4330 of the Code of Virginia.

#### **Section TC-21: Bonds**

- 22.1.1 If required, bonds shall be with a surety company acceptable to the Owner.
- 22.1.2 The successful bidder shall furnish to the Owner a Performance Bond and a Labor and Material Payment Bond each in an amount equal to the full contract sum payable to County of Appomattox.

#### **Section TC-22: Award of Contract (does not pertain to RFPs)**

- 23.1.1 The award of the Contract will be to the responsible bidder submitting the lowest Base Bid whose qualifications indicated the award will be in the best interest of the Owner and whose Bid meets the prescribed requirements. Bidder's proposed Contract time may be a consideration for Contract award.
- 23.1.2 Owner reserves the right to reject or accept any Bid which is in the best interest of the Owner and to waive any and all informalities and the right to disregard all nonconforming or conditional Bids or counterproposals.
- 23.1.3 Unless canceled or rejected, a responsive and responsible Bid from the lowest bidder shall be accepted as submitted, except that if said bid exceeds available funds, the Owner may negotiate with the apparent low bidder to obtain a Contract Price within available funds. If the Owner and the lowest responsive and responsible bidder cannot negotiate a Contract within available funds, all bids shall be rejected.
- 23.1.4 If lowest bid exceeds available funds, the Owner may enter into negotiations with the lowest responsible bidder to lower the bid within the available funds, using the following procedure:
- (.1) The Owner will notify the first lowest responsible bidder, within ten (10) days following the bid opening, the negotiations will be entered into. An itemized price and quantity breakdown of the bid shall be furnished to the Owner by the Bidder within ten (10) days.
- (.2) The Owner will prepare a revised scope of work will be given to the first lowest responsible Bidder for revision of his bid.
- (.3) If the first lowest responsible Bidder's revised bid is within the available funds, a contract will be awarded.
- (.4) If the first lowest Bidder's revised bid is not within the available funds, negotiations will be entered into with the second lowest Bidder using the same procedure outlined above.

- (.5) If the second lowest Bidder's revised bid is not within the available funds, negotiations may be continued with each subsequent lowest Bidder until a satisfactory bid is obtained, or the Owner may reject all bids and rebid the project.

**Section TC-23: Contract Time and Liquidated Damages**

- 24.1.1 **Contract Time:** Each Bidder shall indicate on the bid Form, the number of consecutive calendar days he anticipates to substantially complete the Work from the date of the Notice to Proceed.
- 24.1.2 **Liquidated Damages:** Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is completed within the time specified on the contractor's Bid Form. They also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by owner if the work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as Liquidated Damages for delay (but not as penalty) Contractor shall pay Owner One Hundred Dollars and No Cents (\$100.00) for each day that expires after the time specified on the Contractor's Bid Form for 100% completion to be obtained. There will be **NO** exceptions or exclusions to this requirement.

**Section TC-24: Post-Bid**

- 25.1.1 Submission of Post-Bid Information shall be in accordance with the Contract Documents.
- 25.1.2 The successful Bidder shall be responsible for securing and paying for all required permits.
- 25.1.2 All bids shall remain valid for a period of sixty (60) days after scheduled closing time for receipt of bids. Bid Bonds will be forfeited for bids withdrawn prior to the end of this period.

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